

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

Criminal No. 08-0318

ELECTRONICALLY FILED

v.

ANDREW PEARSON also known as COOKIE
also known as GARNETT LEWIS OWENS also
known as LOUIS OWENS, CORNELIUS
NEWBERN also known as CORN,

Defendants.

Order of Court

Currently pending before this Court is defendant Andrew Pearson's Motion for a Continuance of the Trial or, In the Alternative, an Order Severing His Trial from His Co-Defendant, Cornelius Newburn. (Doc. No. 63). After careful consideration of defendant Pearson's Motion, and the Responses thereto filed by the government and co-defendant Newbern (doc. nos. 65, 66 and 69), this Court hereby grants the motion in part to the extent that it requests a new trial date, and denies in part to the extent that it requests severance (doc. no. 63).

In this case, at the last status conference addressing defendant Newbern's request to proceed *pro se* (which was ultimately denied as moot), it became clear to the Court that defendant Newbern was seeking a prompt trial date (and, in fact, was the basis for his motion to proceed *pro se*). The Court notes that the indictment was filed on August 19, 2008, and the Court has granted several requests by both defendants for extension of time to file pretrial motions. At said conference, and based upon co-defendant Newbern's request for a trial date, the Court tentatively set a trial date of June 15, 2009, but assured defendant Newbern that in any

event, his case would be heard by the end of the summer of 2009, and co-defendant Newbern agreed to said time schedule. Co-defendant Pearson then filed the instant motion seeking either a continuance based upon counsel's unavailability, or a severance. Co-defendant Newbern has filed his response opposing a severance (as has the government), and in said response, Newbern has set forth dates over the course of the summer in which counsel are not available for trial.

The Court finds that a severance is not appropriate under the circumstances of this case at this time, under Federal Rule of Criminal Procedure 14. *See U.S. v. Eufrasio*, 935 F.2d 553 (3d Cir. 1991).

Defendants Pearson and Newbern must file any pretrial motions by June 15, 2009. The Court will issue a Second Pretrial Order setting the trial date for both defendants commencing on August 24, 2009.

IT IS FURTHER ORDERED that pursuant to 18 U.S.C. §§ 3161(h)(6) and (7)(A), the period of delay from the date of this order until the day of trial shall be excluded in computing the time within which the trial of the above-captioned action must commence, because the court concludes that the ends of justice served by granting the extension of time outweigh the interests of the public and defendant in a speedy trial.

SO ORDERED this 21st day of May, 2009.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All counsel of record

